

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 FLORANTE BAUTISTA,

No. C 09-596 WDB

11 Plaintiff,

CONDITIONAL ORDER DISMISSING
WITH PREJUDICE COMPLAINT
FILED FEBRUARY 10, 2009

12 v.

13 WASHINGTON MUTUAL
14 BANK, et al.

15 Defendants.
16 /

17 On February 10, 2009, plaintiff Florante Bautista filed his “Complaint at
18 Common Law.”

19 On March 3, 2009, defendants filed their Motion to Dismiss plaintiff’s
20 Complaint for failure to state a claim (“Motion”). Defendants’ Motion explicitly
21 notified plaintiff that, on April 27, 2009, at 2:30 p.m., the Court would conduct a
22 hearing in connection with defendants’ Motion. See, Notice of Motion at 1.

23 On April 13, 2009, plaintiff filed a document that appears to respond to
24 defendants’ Motion. See, Response to Show Cause of Substantiality or a Motion to
25 File an Affidavit in Support of Opposition to Defendants: Washington Mutual et al.,
26 Motion to Dismiss for Failure to State a Claim.

27 On April 27, 2009, this Court conducted a hearing in connection with
28 defendants’ Motion to Dismiss plaintiff’s Complaint. Plaintiff, who is proceeding
with this action *pro se*, did not appear at the hearing. The Court’s staff made multiple

1 attempts to telephone plaintiff at the phone number provided on plaintiff's Response
 2 to Show Cause, the only phone number of record for plaintiff. The staff was unable to
 3 reach either a live person or a recorded voicemail system.

4 The Court's staff had previously been contacted by an acquaintance of
 5 plaintiff's, Melissa Geguera. In response to a telephone call from the Court's staff to
 6 Ms. Geguera, Ms. Geguera telephoned the Court during the hearing. Ms. Geguera
 7 describes herself as a courier used by plaintiff to file documents with the Court. See,
 8 Transcript April 27, 2009 hearing. Initially, she stated that she believed plaintiff was
 9 out of town. However, when questioned by the Court, it developed that Ms. Geguera
 10 did not have a reliable basis for this assertion. Also without any reliable basis, Ms.
 11 Geguera further stated that she believed that plaintiff had not received notice of the
 12 hearing. Ms. Geguera confirmed on the record that the telephone number and address
 13 used by the Court to contact plaintiff are the only telephone number and address she
 14 has for plaintiff.

15 Plaintiff filed a document that appears to respond to defendants' Motion to
 16 Dismiss. See, April 13th Response to Show Cause. Therefore, the Court concludes
 17 that plaintiff did receive defendants' Motion including notice that the Court would be
 18 conducting a hearing on April 27, 2009. Because the Court concludes that plaintiff
 19 received notice of the hearing, the Court further concludes that plaintiff's failure to
 20 appear at the April 27th hearing demonstrates an intent to abandon this lawsuit.

21 Additionally, the Court FINDS that plaintiff's Complaint fails to set forth any
 22 cause of action and is insufficient to provide defendants with notice of the
 23 fundamental predicates of plaintiff's perceived claims.

24 Because plaintiff appears to have defaulted by not attending the April 27th
 25 hearing and because, on the merits, plaintiff's Complaint is deficient, the Court
 26 **CONDITIONALLY DISMISSES** plaintiff's Complaint **WITH PREJUDICE**.¹

27
 28 ¹If the Court dismisses plaintiff's Complaint "with prejudice" the Court will PROHIBIT
 plaintiff from filing a new complaint based on the same claims he attempted to assert in the
 February 10, 2009, Complaint.

To avoid having his Complaint dismissed with prejudice, by Thursday, May 7, 2009, at 4:00 p.m., plaintiff must file with the Court and serve on defendants a writing that explains why plaintiff did not appear at the April 27, 2009 hearing.

If the Court does not receive the writing described above by May 7, 2009, at 4:00 p.m., the Clerk of the Court immediately **WILL DISMISS** plaintiff's Complaint **WITH PREJUDICE**.

7 || IT IS SO ORDERED.

Dated: April 28, 2009


Wayne D. Brazil
WAYNE D. BRAZIL
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Florante Bautista,

Plaintiff,

Case Number: C 09-596 WDB

V.

Washington Mutual Bank, et al.,

Defendants.

CERTIFICATE OF SERVICE

Washington Mutual Bank, et al.,

Defendants.

I, the undersigned, hereby certify that I am an employee in Office of the Clerk, U.S. District Court, Northern District of California.

11 That on April 28, 2009, I SERVED a true and correct copy(ies) of the attached Order by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
located in the Clerk's office.

14 Florante Bautista
234 Morton Drive
15 Daly City, CA, 94015

17 || Dated: April 28, 2009

Richard W. Wieking, Clerk

Michelle Sicular

By: Michelle Sicula, Law Clerk/Deputy Clerk